



Appeal of James E. and LaVaughn B. Goss

During 1978, appellants were both less than 65 years old. Mr. Goss was retired, and he received \$11,232.00 in U.S. Civil Service pension payments. Mrs. Goss was employed, and she received \$18,059.80 in wages.

As part of their California joint personal income tax return for 1978, appellants included respondent's Form 540, Schedule RP, as their claim for the retirement income credit (also known as the "credit for the elderly"). Before completing Schedule RP, Mr. Goss read respondent's two-page, Schedule R and Schedule RP instruction sheet, which made no mention of any distinction between earned income which is the separate property of the earning spouse, and earned income which is the community property of both spouses. Being otherwise unaware of such a distinction, appellants allocated all of Mrs. Goss' wages to her alone on line 2b(i) of Schedule RP, rather than splitting her wages and allocating one-half to each of the appellants. As a result, they claimed a retirement income credit of \$375.

In California, the earnings of a wife while living with her husband are community property in the absence of a contrary agreement. (Civ. Code, §§ 5110, 5118; In Re Marriage of Jafeman, 29 Cal.App.3d 244 [105 Cal.Rptr. 483] (1972).)

After examining appellants' Schedule RP, respondent reallocated Mrs. Goss' earned income, splitting it between both appellants. The resulting allowable retirement income credit was zero rather than \$375. Respondent disallowed the \$375 credit claimed by appellants and issued a proposed assessment of tax in that amount, plus interest.

This appeal followed. Appellants contend that since they read and followed respondent's instructions for completing Schedule RP as closely as they were able, respondent should not be permitted to deny the claimed credit and to assess either tax or penalty on the basis of law which was not set forth in those instructions. We have addressed similar contentions before in the Appeal of Merlyn R. and Marilyn A. Keay, decided December 9, 1980, and for reasons similar to those set forth in that opinion, we conclude that respondent is not precluded from collecting the tax and interest here at issue.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise-Tax Board **on** the protest of James E. and LaVaughn B. Goss against a proposed assessment of additional personal income tax in the amount of \$375.00 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 31st day Of March , 1982, by the State Board of Equalization, with Board Members Mr. Reilly, Mr. Dronenburg and Mr. Nevins present.

_____, Chairman
George R. Reilly _____, Member
Ernest J. Dronenburg, Jr: _____, Member
Richard Nevins _____, Member
_____, Member